HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

And
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

W.A.NO.419 OF 2006

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Between:

Mesram Sumitra Bai

... Appellant

AND

The Superintendent of Police,

Adilabad District and another.

...Respondents

::JUDGMENT::

Counsel for the Appellant : Sri S.Chandra Sekhar
Counsel for Respondent Nos 1&2 : Government Pleader for Land Acquisition.

Dated 24/4/2006

Per Sri G.S.Singhvi, CJ

This appeal is directed against orders dated 10.6.2005 and 12.8.2005 passed by the learned Single Judge in Writ Petition No.21282 of 1994 and Review W.P.M.P.No.19411 of 2005 respectively.

The appellant's husband Sri Mesram Jangu is said to be the absolure owner of agricultural land measuring Ac.14-15 guntas situate in Jainoor village and Mandal, Adilabad District. Out of this land, Ac.2-00 is said to have been used by the respondents for construction of Police Station and Police quarters at Jainoor. The appellant served legal notice on the respondents for payment of compensation in lieu of the alleged illegal deprivation of property and then filed writ petition under Article 226 of the Constitution of India for issue of a mandamus to the respondents to initiate and complete land acquisition proceedings in respect of Ac.2.00 of land

situate in Survey No.2 and pay compensation at the rate of minimum Rs.20,000/- per acre besides consequential benefits admissible under the Land Acquisition Act, 1894 (for short 'the 1894 Act'). She also prayed for grant of interim relief by directing the respondents to pay at least half of the compensation amount i.e. Rs.20,000/- or a lump sum amount during the pendency of the writ petition.

In the counter affidavit dated 6.2.2005 filed by Sri Kripanand Tripathi Ujela, the then Superintenent of Police, Adilabad District, it was averred that possession of the land in question had been taken with the consent of the owners for the purpose of construction of police station. It was further averred that some of the pattadars had voluntarily donated the land for construction of police station, and therefore, there was no occasion to initiate proceedings under the 1894 Act or to pay compensation to the land owners. Sri Kripanand Tripathi Ujela denied that Mesram Jangu was the absolute owner of the property. According to him Mesram Jangu was cultivating the land comprised in Survey No.2 along with some other persons.
Sri Tripathi averred that Sri Mesram Jangu had donated Ac.2-00 for construction of school building and possession thereof was handed over to the Sarpanch of Gram Panchayat, Jainoor. Later on, he gave no-objection to the donation of that land for construction of Police Station at Jainoor.

The learned Single Judge disposed of the writ petition by presuming that the respondents have not controverted the averments contained in the writ petition. He then examined the record produced by the government counsel and concluded that the so called 'Rajinama' executed by the petitioner in the year 1986 for surrender of the lands is not genuine and bona fide. The learned Single Judge held that possession of the land had been taken forcibly by the departmental authorities. On that premise, he directed payment of compensation of Rs.20,000/-. The relevant portion of the order passed by the learned Single Judge reads as under:

> "It appears that on that date, several such 'Rajinamas' were obtained from several people. The petitioner has denied that she has given any such 'Rajinama'. The record shows that the 'Rajinama', allegedly given by the petitioner, was signed before the witnesses. No particulars of those witnesses have been given, and the names of those two witnesses were mentioned without parentage or residential addresses, and those two names are not even legible. One is K.M.…(not legible) another one is also K.M.…….(not legible). In these circumstances, prima facie, it appears that the execution of these 'Rajinamas' is not genuine. These 'Rajinamas' also create a doubt as some of them, including the

one which is allegedly given by the petitioner, have been given to Mandal Revenue Officer on 26-1-1986. Only one of such 'Rajinamas', which is on file, is supposed to have been executed on 23-4-1986. Every year 26th of January is a public holiday, and it also creates a doubt whether in fact such 'Rajinama' was given by the petitioner or not. Rule 16 of the Rules lays down as under:

'**Relinquishment of land**:- A registered holder may relinquish his land by submitting an unconditional razinama in writing to the Tahsildar or Naib Tahsildar before the end of April in any year. Such razinama need not be stamped but shall be in Form 'C' and the declaration therein shall be attested by two respectable witnesses. The Patwari shall, if requested to do so by the registered holder, write the razinama himself without charging any fees for the same. If the razinama is prepared by the patwari, he shall affix his signature beneath the words written on the lower left hand corner of such razinama.

The Tahsildar or Naib Tahsildar, as the case may be, who receives such razinama shall certify it in his own hand according to the certificate prescribed in Form 'C'. He shall exercise due care in ascertaining the identity of the person who has signed the same, notwithstanding that such notice has been duly endorsed as hereinbefore required. The relinquishment shall have effect from the close of the current year.'

One of the conditions in this Rule is that it has to be attested by two respectable witnesses. We have already noted herein above that the particulars of those two respectable witnesses were not noted. The file also makes interesting legend. Rajinama was executed allegedly on 26th January, 1986. The file reveals that a note was written by some officer in June, 1984, on a reference, which was a letter of the Superintendent of Police, Adilabad, dated
11-06-1984 making some requisition, but the same letter is not on file. The note reads as under:

"Kindly peruse the reference cited. The Superintendent of Police, Adilabad has filed alienation proposals of S.No.2, Jainoor to an extent of Ac.2-00.

On verification of Revenue record, it is found that the S.No.2 of Jainoor is joint patta land of Sri Atram Sone Rao, Mesram Jangu s/o. Sambu.

As per the Gram Panchayat, it is seen that out of S.No.2 Jainoor, an extent of Ac.2-00 has been donated by Pattadar for construction of primary school in favour of Gram Panchayat. The same above land is being donated in favour of Police Department for construction of Police

Station.

As per B.S.O.No.33 (i) the relinquishment of ryotwari Land must be by a written document and must take place sufficiently early in the season to enable another ryot to commence cultivation upon it, and, as per B.S.O.33 (7), Tahsildar and Deputy Tahsildar may accept relinquishments provided the lands relinquished are situated within their jurisdiction.

File is submitted for spot inspection, and to be obtained the relinquishment form from the pattedars.

Then, an order was passed on this note by some authority, which reads as under"

A) Put up draft report to R.D.O., Adilabad, Collector, Adilabad narrating the facts and to permit to transfer the land to Police Department for Police Station.

B) Issue general notice inviting objection if any for transfer of land for Police Station. Put up draft.

Sd/-

26-06-1984

So, the officers in the Revenue Department, and Police Department had decided in the year 1984 to hand over this land to Police Department for construction of a Police station. The alleged 'Rajinama' is dated 26-1-1986. Then, there is a letter by Superintendent of Police on record which reads as under:

"In view of law and order situation prevailing in the area it is considered to locate Police Station and Quarters at Jainoor to maintain urgent Law and Order and to have easy accessibility to troublesome area. There is no suitable Government land in the village. The Gram Panchayat of Jainoor village are ready to donate the land extent of 2 acres of S.No.1. As it is adjacent to Jainoor village and to road Jainoor to Sirpoor and a suitable one. This 2 acres of land be alienated to the police Department. The Gram Panchayat resolution is enclosed herewith.

Superintendent of Police,

Adilabad

The record reveals that the land was taken forcibly and the Government had, much earlier than the date when the alleged 'Rajinamas' were executed, decided to take over this land and handed over to the Police Department."

Feeling dissatisfied with the order of the learned Single Judge, the appellant filed an application under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure for review of order dated 10-6-2005. The same was registered as review W.P.M.P.No.19411 of 2005 and was dismissed by the learned Single Judge with the observation that no ground for review has been made out.

We have heard learned counsel for the parties and perused the record. In our opinion, learned Single Judge committed an error by disposing of the writ petition with the direction to the respondents to pay Rs.20,000/- to the appellant herein by way of compensation. Once the learned Single Judge found that possession of the land had been forcibly taken by the respondents, then he should have considered the desirability of issuing a direction to the respondents to resort to the proceedings under the 1894 Act or at least pay compensation to the appellant in accordance with the parameters laid down in that Act. It, however, appears that the learned Single Judge directed payment of a lump sum compensation of Rs.20,000/- to the appellant simply by looking at the prayer for interim relief made by her. We are sure that if the learned Single Judge had comprehensively considered the plea of the appellant, then he would not have directed payment of compensation of Rs.20,000/- only. In our view, the omission on the part of the learned Single Judge to consider the appellant's claim in a correct perspective has resulted in substantial failure of justice. Therefore, the matter deserves to be remanded for fresh adjudication of the writ petition filed by the appellant.

In the result, the appeal is allowed. The orders of the learned Single Judge dismissing the writ petition as well as the review application are set aside with the direction that Writ Petition No.21282 of 1994 be listed before the learned Single Judge for fresh adjudication.

G.S.SINGHVI, CJ

Dt.24/4/2006

G.BHAVANI PRASAD, J

Msv/GRR